



## United Keetoowah Band of Cherokee Indians In Oklahoma

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Testimony of the United Keetoowah Band of Cherokee Indians in Oklahoma  
Dallas Proctor, Chief

Regarding H.R. 2880  
Five Nations Indian Land Reform Act

Before the Senate Committee on Indian Affairs

September 18, 2002

Thank you on behalf of the United Keetoowah Band of Cherokee Indians in Oklahoma for the opportunity to testify regarding HR 2880, the Five Nations Indian Land Reform Act. Your Committee has a proud history of protecting and furthering tribal sovereignty. Because of this, we are hopeful that you will amend HR 2880 to reflect the fact that the United Keetoowah Band (UKB) of Cherokee Indians is a separate government from the Cherokee Nation of Oklahoma (CNO) and one with equal claim to inheritance of authority and rights of the historic Cherokee Nation.

There is a complex problem with this bill because of the interwoven nature of the two tribes and their tribal members regarding their restricted lands, but there is a simple fix. The harms that this bill intends to correct were visited upon the historic Cherokee Nation. That historic Cherokee Nation has been succeeded by two federally recognized tribes both having descendants from the 1906 Dawes Rolls and both having descendants who own restricted property --- the United Keetoowah Band of Cherokee Indians in Oklahoma and the Cherokee Nation of Oklahoma. Ninety eight percent of UKB members still live within the boundaries of the historic Cherokee reservation. All of the UKB and CNO members in Oklahoma are affected, and both tribes should be named in the bill as successor to the historic Cherokee Nation. We ask this Committee to amend the definition of the Five Nations in Section 4(1) of the bill to provide that the term “Five Nations” means “the Cherokee Nation through its successors, the United Keetoowah Band of Cherokee in Oklahoma and the Cherokee Nation of Oklahoma.....” If the term “Cherokee Nation” were defined as its present successors, CNO and UKB, much of the bill would be repaired. We ask that you do so to ensure that these reforms apply with equal fairness to all descendants of the historic Cherokee Nation.

If enacted without this change, our tribal members face the prospect of having many aspects of their lives related to lands, property, and inheritance determined by a tribal government that is not their own. It would impede the efforts of UKB to protect our members and exercise jurisdiction over our lands.

UKB is a federally recognized tribe. We ask this Committee to respect the fact that the federal government, at the direction of Congress, already recognizes the United Keetoowah Band of Cherokee Indians in Oklahoma as sovereign and independent of the present day Cherokee Nation of Oklahoma. While our people are closely related and we were at one time part of the historic Cherokee Nation, we now have separate federally recognized governments. A small percentage of UKB members, mostly elder, are dually enrolled with CNO, but our enrollment rules now prohibit that. Just as there are a number of Sioux tribal governments in South Dakota, there is more than one Cherokee tribal government in Oklahoma. Indeed, many Keetoowah ancestors existed as the “Western Cherokee” tribe in Oklahoma prior to the arrival of those Cherokees whose descendants comprise the vast majority of the members of the present-day Cherokee Nation of Oklahoma. As evidence of UKB status we note:

- The United States Congress, through the Act of 1946, legislatively authorized the United Keetoowah Band of Cherokee Indians in Oklahoma to organize as a separate tribal entity under the Oklahoma Indian Welfare Act.

- The Secretary of Interior approved the Constitution of the United Keetoowah Band of Cherokee Indians in Oklahoma in 1950.
- UKB was listed by the Department of Interior most recently in the July 12, 2002 Federal Register as a federally recognized tribe.
- UKB contracts under the Indian Self-Determination Act with the BIA to administer funds for services to its members.

There are two successor governments to the 1906 Cherokee Nation rolls. The UKB ancestors were part of the historic Cherokee Nation at the time of the Act of April 26, 1906 that dismantled the Cherokee government, allotted portions of the Cherokee lands and caused the creation of a final roll of the Cherokee Nation. H.R. 2880 addresses problems that flow from that and subsequent legislation affecting the land rights of lineal descendants of the Five Nations, including the historic Cherokee Nation. While only five such governmental entities existed in 1906 that is no longer true. Because UKB members are lineal descendants of the 1906 Cherokee rolls, HR 2880 covers them and their property. However, no role has been provided for their tribal government.

*We have attached more detailed information regarding the history of the United Keetoowah Band of Cherokee Indians of Oklahoma. (Attachment 1)*

Requested changes to HR 2880. We support the goals of HR 2880. Amending the bill to give UKB its rightful treatment as a tribal government would not undermine the intent of the bill. *We have attached several specific recommendations for proposed changes. (Attachment 2)*

We agree with the intent of H.R. 2880 to provide better protection for individual Indian lands. We agree with the intent to simplify the jurisdiction over probates and conveyances of land by transferring these responsibilities from the state of Oklahoma to the Interior Department. We can all agree that reforms are needed in these and other areas. But H.R. 2880 would complicate the lives of our members by transferring issues regarding their land rights to the control of the Cherokee Nation of Oklahoma – essentially a change from one foreign government to another.

The United Keetoowah Band of Cherokee Indians in Oklahoma thanks you for your hard work on this important bill to end the disparities of Indian land tenure in Oklahoma. Our comments are intended to avoid the creation of new, and unintended disparities. We appreciate your consideration of our concerns.

**Brief History of the United Keetoowah Band of Cherokee Indians<sup>1</sup>**

The Historic Cherokee Indians

The Cherokee Indians originally lived in the southeastern portion of the United States on lands forming present day Georgia, Alabama, Tennessee, North Carolina and South Carolina.<sup>2</sup> While Treaties were first entered into between the United States and the Cherokee Nation in the late 1700's,<sup>3</sup> establishing boundaries of the Cherokee Nation and affirming loyalties of the Tribe to the United States, the Cherokees did not have a centralized government and the people lived in towns located throughout the Cherokee territory.<sup>4</sup>

History of the Western Cherokees

In 1808, a delegation of Cherokees from the upper and lower towns of the Cherokee Nation went to Washington, D.C. to inform the President of the United States that not all Cherokee people wanted to pursue what was deemed a "civilized" life.<sup>5</sup> The delegation requested that the President divide the upper towns, whose people wanted to participate in agriculture and establish a regular government, from the lower towns whose people wanted to continue the hunter way of life.<sup>6</sup> Further, the people of the lower towns desired to remove across the Mississippi River onto vacant lands within the United States so that they might continue the traditional Cherokee life.<sup>7</sup>

On January 9, 1809, the President of the United States allowed the lower towns to send an exploring party to find suitable lands on the Arkansas and White Rivers.<sup>8</sup> In 1817, the United States ceded such lands to the Western Cherokees in exchange for a portion of the Cherokee lands they had occupied and were entitled to in the East.<sup>9</sup> One third of the entire Cherokee

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<sup>1</sup> Please note that the following materials are excerpted from a brief prepared for the United States Department of Interior in connection with the pending proposals to resolve the historic Cherokee Nation claim to the Arkansas Riverbed lands. As such, the citations refer to many historic documents collected in two volumes of Exhibits prepared to accompany that brief. Those exhibits are available, on request, from the UKB Washington Counsel through Judith A. Shapiro, Hobbs, Straus, Dean & Walker, 202-822-8282.

<sup>2</sup> See United States v. Old Settlers, 148 U.S. 427, 434 (1893).

<sup>3</sup> See Treaty with the Cherokee, Nov. 28, 1785, 7 Stat. 18 (Exh. 4); Treaty with the Cherokee, July 2, 1791, 7 Stat. 39 (Exh. 5); Treaty with the Cherokee, Oct. 2, 1798, 7 Stat. 62 (Exh. 6).

<sup>4</sup> In the Eighteenth Century, the Cherokees numbered over ten thousand and were located in the southeastern United States in sixty or more towns. These towns operated as separate autonomous units with no unified government. Rennard Strickland, Fire and the Spirits 4 (1975) (Exh. 7). One of these towns was "Kituhwa," the nucleus of the "mother towns" of the historic Cherokee people, from which Keetoowah organizations take their name. Report of Charles Wisdom, Collaborator, Office of Indian Affairs (May 25, 1937)(citing James Mooney's report, "The Myths of the Cherokee People").

<sup>5</sup> Treaty with the Cherokee, July 8, 1817, preamble, 7 Stat. 156 (Exh. 8).

<sup>6</sup> Id.

<sup>7</sup> Id.

<sup>8</sup> Id.

<sup>9</sup> Id., art. 1, 2 & 5.

Nation emigrated west.<sup>10</sup> Those Cherokees who moved were called the "western Cherokees" or "old settlers."<sup>11</sup>

By 1828, dissatisfied with their lands on the Arkansas and White Rivers, partly due to encroachment by white settlers, the Western Cherokees entered into a treaty with the United States to move onto lands further west.<sup>12</sup> The Treaty granted the Western Cherokees seven million acres of land running along the Arkansas, Canadian and Grand Rivers.<sup>13</sup> This land grant includes a portion of present-day Northeastern Oklahoma and the Arkansas Riverbed lands, which are at issue in the proposed settlement of the pending Claims case.<sup>14</sup> The Western Cherokees were also given a perpetual outlet West, as far as the sovereignty of the United States extended.<sup>15</sup>

Those Cherokees who declined to leave the eastern homelands for the new lands in the West were called the Eastern Cherokees.<sup>16</sup> The southeastern states, unhappy that these Eastern Cherokees remained, passed various harassing and vexatious legislation to encourage the Indians to leave.<sup>17</sup> Violent incidents were frequent between the Eastern Cherokees and the white people, especially in Georgia.<sup>18</sup> The southeastern states placed pressure on the federal government to remove these remaining Indians and extinguish Indian title to the lands within those states.<sup>19</sup>

#### The Eastern Cherokees are Forced onto Western Cherokee Lands

To resolve the concerns of the southeastern states, the United States entered into the Treaty of New Echota with the Cherokee Tribe on December 29, 1835.<sup>20</sup> This treaty required the Eastern Cherokees to cede all Cherokee lands east of the Mississippi River and provided for the removal of those Eastern Cherokee Indians from that area.<sup>21</sup> These Eastern Cherokees would be removed to the land then held by the Western Cherokees.<sup>22</sup>

The Treaty of 1835 was intended to reunite the Cherokee people into one body and create a permanent home for them.<sup>23</sup> It also promised that the lands ceded to the Cherokee Nation in the 1835 Treaty would "in no future time without their consent, be included within the territorial limits or jurisdiction of any State or Territory."<sup>24</sup>

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<sup>10</sup> United States v. Old Settlers, 148 U.S. 427, 436 (1893).

<sup>11</sup> Cherokee Nation v. United States, 40 Ct. Cl. 252, 1904 WL 872, \*29 (1905).

<sup>12</sup> Treaty with the Western Cherokee, May 6, 1828, preamble, 7 Stat. 311 (Exh. 9).

<sup>13</sup> Treaty with the Western Cherokee, May 6, 1828, art. 2, 7 Stat. 311 (Exh. 9).

<sup>14</sup> Treaty with the Western Cherokee, May 6, 1828, art. 2, 7 Stat. 311 (Exh. 9); Cherokee Nation of Oklahoma v. United States, No. 218-89L (Cl. Ct.). The Cherokee Nation case was originally filed on April 21, 1989, in the United States Claims Court, which was replaced by the United States Court of Federal Claims. To avoid confusion, all citations to this case will specify "Riverbed Claims Case."

<sup>15</sup> Treaty with the Western Cherokee, May 6, 1828, art. 2, 7 Stat. 311 (Exh. 9).

<sup>16</sup> United States v. Cherokee Nation, 202 U.S. 101, 129 (1906).

<sup>17</sup> See Cherokee Nation v. Georgia, 30 U.S. 1, 9-10 (1831).

<sup>18</sup> Id. at 14.

<sup>19</sup> Id. at 8.

<sup>20</sup> Treaty with the Cherokee (Treaty of New Echota), December 29, 1835, preamble, 7 Stat. 478 (Exh. 10).

<sup>21</sup> Id., art. 1 & 16.

<sup>22</sup> Id., art. 2.

<sup>23</sup> Id., preamble.

<sup>24</sup> Id., art. 5.

Both the "Western Cherokees" and "Eastern Cherokees" objected to the treaty, stating that the signers had not been authorized representatives of the groups.<sup>25</sup> Regardless of the protests, however, the Eastern Cherokees were removed onto the lands of the Western Cherokees.<sup>26</sup>

After this influx, the Eastern Cherokees significantly outnumbered the Western Cherokees. Tensions escalated between the two groups.<sup>27</sup> The Eastern Cherokee newcomers wanted their form of government to replace the government already put in place by the Western Cherokees, who, objected to such displacement of their own powers.<sup>28</sup>

In an effort to lessen the tensions amongst the two communities now within one Cherokee land base, the Western and Eastern Cherokees met in convention in July of 1838.<sup>29</sup> At the convention, the groups entered into an "Act of union between the Eastern and Western Cherokees."<sup>30</sup> The validity of the Act of Union was not recognized by the Western Cherokees because they had not been adequately represented at the convention. They further believed that those representatives signing the Act of union on behalf of the Western Cherokees did so without authority.<sup>31</sup> Many of the Western Cherokees refused to attend the convention because they knew they were outnumbered by the Eastern Cherokees.<sup>32</sup> The Eastern Cherokees, by force of number, were able to control the Cherokee Nation government.<sup>33</sup> This act of union declared that the two communities "mutually agree to form ourselves into one body politic under the style and title of the Cherokee Nation."<sup>34</sup> The act of union also stated that all lands of the Cherokees shall vest in the one Cherokee Nation.<sup>35</sup>

But even with the act of union, tensions between the Cherokee groups survived, and "between the years 1838 to 1846, the Cherokee country was the scene of intestine[sic] disorders of the gravest character, destroying the rights and liberties of certain of the Cherokees, and endangering the peace of the frontier."<sup>36</sup>

In 1846, the United States entered into a treaty with the Cherokee Nation as a whole, recognizing that "serious difficulties have, for a considerable time past, existed between the different portions of the people constituting and recognized as the Cherokee Nation of Indians . . ."<sup>37</sup> The 1846 Treaty reaffirmed that the differing factions of the Cherokee Nation were one body politic and made the Eastern and Western Cherokees, together, party to the terms of the contested 1835 Treaty. The 1846 Treaty also specifically reaffirmed that the lands of the Cherokee Nation were to be held in common for all the Cherokee people, stating:

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<sup>25</sup> Western or Old Settler Cherokees v. United States, 82 Ct. Cl. 566, 1936 WL 3016, \*10 (1936).

<sup>26</sup> See, e.g., United States v. Old Settlers, 148 U.S. 427, 443 (1893)(describing forced military removal).

<sup>27</sup> Western or Old Settler Cherokees v. United States, 82 Ct. Cl. 566, 1936 WL 3016, \*9 (1936).

<sup>28</sup> United States v. Old Settlers, 148 U.S. 427, 444 (1893).

<sup>29</sup> Cherokee Nation v. United States, 40 Ct. Cl. 252, 1904 WL 872, \*10 (1905).

<sup>30</sup> Id.

<sup>31</sup> Id. (Citing a letter from General Arbuckle, the military commander at Fort Gibson, to the Secretary of War, dated January 1840.)

<sup>32</sup> Id.

<sup>33</sup> Id.

<sup>34</sup> Cherokee Nation v. United States, 40 Ct. Cl. 252, 1904 WL 872, \*11 (1905).

<sup>35</sup> Id.

<sup>36</sup> United States v. Old Settlers, 148 U.S. 427, 444 (1893).

<sup>37</sup> Treaty with the Cherokee, August 6, 1846, preamble, 9 Stat. 871 (Exh. 11).

That the lands now occupied by the Cherokee Nation shall be secured to the whole Cherokee people for their common use and benefit . . ." <sup>38</sup>

Moreover, the lands included in the 1828 Treaty, which first conveyed the Arkansas Riverbed lands now in question, were to be for the whole Nation:

. . . it has been decided . . . that portion of the Cherokee people known as the "Old Settlers," or "Western Cherokees," had no exclusive title to the territory ceded in that treaty, but that the same was intended for the use of, and to be the home for, the whole nation, including as well that portion then east as that portion then west of the Mississippi . . . <sup>39</sup>

### A Formal Keetoowah Society is Created

Many of the Western Cherokees saw the approaching Civil War as inevitable, and perceived it as a threat to traditional Cherokee culture.<sup>40</sup> They also acknowledged that the Cherokee Nation was still divided into two main factions, with their faction being in the minority.<sup>41</sup> This group of traditional Cherokees gathered "in the dark of night and in the woods" to form an organization for self-protection, cultural preservation and to honor their relations with the United States.<sup>42</sup> This organization adopted a constitution in 1859, calling itself the "Keetoowah Society." <sup>43</sup>

In 1860, the Keetoowah Society met several times to develop laws under their constitution to govern its members.<sup>44</sup> "Only full blood Cherokees uneducated, and no mixed blood friends" were allowed membership in the Keetoowah Society.<sup>45</sup>

In the beginning, the Keetoowah Society occupied a prominent role in Cherokee politics, but this power diminished as the number of mixed-bloods and intermarried citizens overwhelmed the Cherokee Nation population.<sup>46</sup>

### Federal Attempts to Dissolve the Cherokee Nation

In preparation for Oklahoma statehood, Congress passed the Indian Appropriation Act in 1893, authorizing the Dawes Commission to negotiate allotments with the Five Civilized Tribes.<sup>47</sup> The Keetoowahs opposed allotment, passing a resolution asserting that the lands of the

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<sup>38</sup> Id., art. 1.

<sup>39</sup> Id., art. 4.

<sup>40</sup> 1859 Constitution of the Keetoowah Society, Deliberation and ch. I § 1 (Exh. 1).

<sup>41</sup> Id., ch. I § 2.

<sup>42</sup> Id., Deliberation.

<sup>43</sup> Id.

<sup>44</sup> Id., ch. I-XVI.

<sup>45</sup> Id., ch. II § 6.

<sup>46</sup> Georgia Rae Leeds, The United Keetoowah Band of Cherokee Indians in Oklahoma 6-7 (1996) (Exh. 47).

<sup>47</sup> Indian Appropriation Act, 52<sup>nd</sup> Cong., § 16 (March 3, 1893)(Exh. 12).

Cherokees were common property.<sup>48</sup> While the Keetoowahs agreed to be enrolled in the Dawes Commission roll, they did so under protest.<sup>49</sup>

In 1900, the Dawes Commission negotiated an agreement with the Cherokee people regarding the allotment of tribal lands and the dissolution of the tribal government.<sup>50</sup> The agreement also stated that the "tribal government of the Cherokee Nation shall not continue longer than March fourth, nineteen hundred and six, subject to such future legislation as Congress may deem proper."<sup>51</sup> The agreement was ratified by Congress on March 1, 1901, but rejected in a subsequent election of the Cherokee people on April 29, 1901.<sup>52</sup> Members of the Keetoowah Society either voted against the agreement or abstained from voting.<sup>53</sup> The Cherokee National Council, however, adopted a memorial to Congress on December 18, 1901 requesting that the Cherokee lands be allotted.<sup>54</sup> In 1902, Congress passed a law that required the allotment of Cherokee lands and terminated the tribal government as of March 4, 1906.<sup>55</sup> This Act was ratified by the citizens of the Cherokee Nation, and is commonly described as the Cherokee Agreement.<sup>56</sup>

With the termination of the Cherokee tribal government approaching, the Keetoowahs wanted to transform their organization into a political body that could take the place of the dismantled government of the Cherokee Nation and "provide a means for the protection of the rights and interest of the Cherokee people in their lands and funds . . ."<sup>57</sup> In 1905, the Keetoowah Society applied for and received a federal charter under a process authorized by the treaty of 1866 and Act of June 27, 1898.<sup>58</sup>

By the Act of 1906, Congress permitted the Cherokee government to continue "until otherwise provided by law," but only with limited powers.<sup>59</sup> The Principal Chief, to be appointed by the President of the United States, was required to execute documents upon notice by the Secretary of the Interior.<sup>60</sup> If the Principal Chief did not sign within the required time, the Secretary was authorized to sign such documents.<sup>61</sup> Additionally, the Office of Indian Affairs determined that the Act of 1906, while allowing the current tribal officers to continue in their office, did not "contemplate[d] . . . that any further elections should be held in the various

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<sup>48</sup> Resolution of the Keetoowah or Fullblood Cherokees, at 1 (Nov. 28, 1900) (Exh. 13).

<sup>49</sup> Id.

<sup>50</sup> See Act of March 1, 1901, preamble, 31 Stat. 848 (Exh. 14).

<sup>51</sup> See Act of March 1, 1901, §58, 31 Stat. 848 (Exh. 14).

<sup>52</sup> See Memorial from the Cherokee Indians, together with the draft of a bill for the allotment of lands, at 1 (April 16, 1902) (Exh. 15).

<sup>53</sup> Georgia Rae Leeds, The United Keetoowah Band of Cherokee Indians in Oklahoma 7 (1996) (Exh. 47).

<sup>54</sup> See Letter from Oscar L. Chapman, Assistant Secretary, to the Attorney General, November 6, 1935, at 7 (Exh. 16).

<sup>55</sup> Cherokee Agreement 1902, Pub. L. No. 57-241, 32 Stat. 716 (Exh. 17).

<sup>56</sup> See Letter from Oscar L. Chapman, Assistant Secretary, to the Attorney General, November 6, 1935, at 8.

<sup>57</sup> 1905 Constitution of the Keetoowah Society, Res. No. 1 (Exh. 2).

<sup>58</sup> See Certificate of Incorporation of the Keetoowah Society, United States Court for the Indian Territory, September 30, 1905 (Exh. 2).

<sup>59</sup> Act of April 26, 1906, § 28, 32 Stat. 137, 148 (Exh. 18).

<sup>60</sup> Id., § 6.

<sup>61</sup> Id.

nations of the Five Civilized Tribes.<sup>62</sup> In effect, the Cherokee Nation was to be placed under the management of the President of the United States, acting through the Principal Chief.<sup>63</sup>

The Act of 1906 also stated that any unallotted lands would be held by the United States in trust for the "use and benefit of the Indians respectively comprising each of said tribes, and their heirs as the same shall appear on the rolls as finally concluded . . . ."<sup>64</sup> The Arkansas Riverbed lands, which were ceded to the Cherokees in the 1828 Treaty, were not allotted to individual Indians so fell within the provisions of the 1906 Act.<sup>65</sup>

In 1907, Oklahoma became a State.<sup>66</sup> The Act that authorized Oklahoma Statehood also preserved the authority that the United States had had prior to the passage of the Act over the Indians, their lands and property.<sup>67</sup> Upon statehood, Oklahoma began exercising control over the Arkansas Riverbed lands.<sup>68</sup>

W.C. Rogers was Principal Chief of the Cherokee Nation was W.C. Rogers from 1903 until his death in 1917, deemed to be the last Principal Chief elected under the 1839 Cherokee constitution.<sup>69</sup> The Commissioner to the Five Tribes reported, in 1914, that "the tribal form of government of the Cherokee tribe was practically abolished at the close of the fiscal year June 30, 1914, all officers having tendered their resignations to be effective as of that date."<sup>70</sup>

After Principal Chief Rogers' death in 1917, the President of the United States, pursuant to the Act of 1906, "appointed from time to time as necessity arose certain members of the Cherokee Nation to the office of Principal Chief of said nation, the appointments in each case being for certain temporary periods."<sup>71</sup> Over the next 19 years, there would be six Principal Chiefs appointed by the President.<sup>72</sup> The Presidentially appointed Chiefs usually held office for only one day, with only one Principal Chief holding office for as long as 17 days.<sup>73</sup> The

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<sup>62</sup> Letter from C.J. Rhoads, Commissioner of Indian Affairs, to Mr. Frank Boudinot, Attorney at Law, October 6, 1931, at 1 (Exh. 19).

<sup>63</sup> See Act of April 26, 1906, § 28, 32 Stat. 137, 148 ("That the tribal existence and present tribal governments of the Choctaw, Chickasaw, Cherokee, Creek, and Seminole tribes or nations are hereby continued in full force and effect for all purposes authorized, by law, until otherwise provided by law, . . . *Provided*, that no act, ordinance, or resolution . . . of the tribal council or legislature of any of said tribes or nations shall be of validity until approved by the President of the United States: *Provided further*, That no contract involving the payment or expenditure of any money or affecting any property belonging to any of said tribes or nations made by them or any of them or by any officer thereof, shall be of any validity until approved by the President of the United States.") (Exh. 18).

<sup>64</sup> *Id.*, § 27.

<sup>65</sup> See *Choctaw Nation v. Oklahoma*, 397 U.S. 620 (1970).

<sup>66</sup> See Enabling Act of June 16, 1906, 34 Stat. 267.

<sup>67</sup> *Id.*

<sup>68</sup> See *Choctaw Nation v. Cherokee Nation*, 393 F. Supp. 224, 246 (E.D. Okla. 1975).

<sup>69</sup> See Letter from the Assistant Secretary F.M. Goodwin to the Attorney General, July 18, 1921 (Exh. 50).

<sup>70</sup> Georgia Rae Leeds, *The United Keetoowah Band of Cherokee Indians in Oklahoma* 11 (1996).

(referencing the Annual Report of the Commissioner to the Five Civilized Tribes, 1914) (Exh. 47); see also, Letter from the Commissioner on Indian Affairs to Frank Boudinot, Attorney, October 6, 1931 (Exh. 19).

<sup>71</sup> Letter from the Commissioner on Indian Affairs to Frank Boudinot, Attorney, October 6, 1931, at 2 ("There is at present no principal chief or other tribal official of the Cherokee Nation.") (Exh. 19).

<sup>72</sup> Georgia Rae Leeds, *The United Keetoowah Band of Cherokee Indians in Oklahoma* 11 (1996) (Exh. 47).

<sup>73</sup> *Id.*

remainder of the 19 years, the President of the United States left the office of Principal Chief vacant.<sup>74</sup>

In 1941, the President of the United States appointed J. Bartley Milam as Principal Chief of the Cherokee Nation.<sup>75</sup> On Milam's death in 1949, W.W. Keeler was appointed.<sup>76</sup>

In 1936, the Assistant Secretary of the Interior reported:

After the expiration of terms of Office, death, etc., of the then existing tribal officers, no other officers were ever elected or appointed except a few temporary appointments of principal chiefs for certain specific purposes. Such appointments expired when the business for which the appointments were made had been completed.

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Speaking generally, it may be said that the Cherokee National Government has lost most, if not all, of its 'governmental' power and authority. Such powers as the Cherokee government may have are limited to what may be termed business matters.<sup>77</sup>

As the Cherokee Nation government ceased operation, the Keetoowah Society became more active. The Society filed cases in federal court to secure the rights of the Cherokee people.<sup>78</sup> In 1914, the Keetoowah Society had its attorneys bring a claim for interest on funds owed the Cherokees under the provisions of the 1835 Treaty.<sup>79</sup>

#### Evolution of the United Keetoowah Band of Cherokee Indians in Oklahoma

As the Indian Reorganization Act<sup>80</sup> evolved, the Keetoowahs began efforts to organize as a separate tribal entity.<sup>81</sup> A.M. Landman, Superintendent of the Five Civilized Tribes, believed that the affairs of the impoverished full-blood Cherokees should be handled by the full-bloods themselves.<sup>82</sup> He acknowledged that mixed-blood Cherokees would control any tribal organization.<sup>83</sup>

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<sup>74</sup> Id.

<sup>75</sup> Id. at 23.

<sup>76</sup> Id. at 23-24

<sup>77</sup> Letter from the Assistant Secretary of the Interior to the Attorney General, August 20, 1936, at 23 (Exh. 52).

<sup>78</sup> See Cherokees Seek to Recover Interest on Deferred Payment, The Red Man, Vol. 7, No. 3., October 1914 (Exh. 20).

<sup>79</sup> Id.

<sup>80</sup> Act of June 18, 1934, 48 Stat. 984.

<sup>81</sup> See Georgia Rae Leeds, The United Keetoowah Band of Cherokee Indians in Oklahoma 14 (1996) (Exh. 47).

<sup>82</sup> Id. (citing a questionnaire on the status of tribal governments that the various Indian superintendents within the Office of Indian Affairs were required to fill out).

<sup>83</sup> Id.

While the Indian Reorganization Act was inapplicable to Oklahoma Indians, another Act of Congress, the Oklahoma Indian Welfare Act ("OIWA"), would allow them to organize.<sup>84</sup> The Keetoowahs continued their efforts to do so.

In 1937, Dr. Charles Wisdom, an anthropologist working for the BIA, began investigating the history of the Keetoowahs and their desire to organize separately.<sup>85</sup> Dr. Wisdom, however, did not refer in his report to the 1905 federal charter that the Keetoowah Society had secured, authorizing the Society to organize as a legal entity.<sup>86</sup> Based on Wisdom's report, Acting Solicitor for the Department of the Interior Frederick Kirgis, opined that the Keetoowahs could not be considered a band under the Oklahoma Indian Welfare Act.<sup>87</sup> Kirgis believed the UKB was distinguishable from the Creek Tribal towns because the Creek Tribal towns had once been organized governmental units of the Creek Indians -- functioning political subdivisions of the Creek Nation.<sup>88</sup> He believed that the same distinctions did not apply to the Keetoowahs.<sup>89</sup>

Despite this opinion, the Keetoowahs did not give up their efforts to organize under the OIWA. In 1939, Ben, the Field Agent for the Five Civilized Tribes Agency found the 1905 federal charter of the Keetoowah Society and thought that the Keetoowahs could organize under the OIWA.<sup>90</sup> The Keetoowahs then began efforts to formalize a constitution.<sup>91</sup>

In 1940, William Zimmerman, Jr., Assistant Commissioner, Office of Indian Affairs wrote a letter stating that: "it has been agreed that further effort should be made to establish, if possible, the eligibility of the Kee-too-wah Society to organize as a band under the Oklahoma Act."<sup>92</sup> In 1942, the Keetoowahs requested that Superintendent A.M. Landman recognize the Keetoowahs under the OIWA.<sup>93</sup>

Officials in the Office of Indian Affairs began recommending that the Keetoowahs be recognized as a band of Indians under the Oklahoma Indian Welfare Act, or that appropriate legislation be initiated to achieve recognition.<sup>94</sup> The Principal Chief of the Cherokee Nation also

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<sup>84</sup> Act of June 26, 1936, 49 Stat. 1967.

<sup>85</sup> See Letter from A.C. Monahan, Regional Coordinator to Commissioner of Indian Affairs, June 28, 1937, and attached report by Charles Wisdom entitled "Memorandum on the Tribal Character of the Keedoowah Society of the Cherokee" (Exh. 23).

<sup>86</sup> See Charles Wisdom, Memorandum on the Tribal Character of the Keedoowah Society of the Cherokee (Exh. 23).

<sup>87</sup> Memorandum for the Commissioner of Indian Affairs by Frederic L. Kirgis, Acting Solicitor, July 29, 1937 (Exh. 24).

<sup>88</sup> Id.

<sup>89</sup> Id.

<sup>90</sup> See Letter from A.C. Monahan, Coordinator to Mr. Daiker, Indian Organization, August 2, 1939 (Exh. 25).

<sup>91</sup> See Draft of Constitution and By-laws of the United Keetoowahs Cherokee Band of Indians in Oklahoma, 1939 (Exh. 51).

<sup>92</sup> See Letter from William Zimmerman, Jr., Assistant Commissioner to A.A. Exendine, April 13, 1940 (Exh. 26).

<sup>93</sup> See Georgia Rae Leeds, The United Keetoowah Band of Cherokee Indians in Oklahoma 19 (1996)(Exh. 47).

<sup>94</sup> See Letter from A.A. Exendine, Organization Field Agent for the Office of Indian Affairs, to the Commissioner on Indian Affairs, October 26, 1942 (Exh. 28).

supported legislation that would allow the Keetoowahs to organize as a band of Indians and wrote a letter to the Commissioner on Indian Affairs in 1942 expressing his support.<sup>95</sup>

On April 25, 1944, D'Arcy McNickle, then Chief of the Branch of Tribal Relations in the Bureau of Indian Affairs, wrote that he disagreed with the 1937 Kirgis Opinion.<sup>96</sup> McNickle proposed that the Kirgis Opinion be revised, and that the Keetoowahs be allowed to separately organize.<sup>97</sup> According to the McNickle, the Keetoowah Society was more than a "secret society." He stated, "It has been a formally organized body at least since 1858, with representative districts, and for many years it had a common leadership."<sup>98</sup> McNickle found that the Keetoowahs, through all their actions, "exercise[d] independent political action, even to the point of initiating hostile proceedings."<sup>99</sup> McNickle noted that the Keetowah name and the people originated from the historic Cherokee town of Kituhwa, in the eastern homelands, prior to western migration.<sup>100</sup> McNickle stressed that Keetoowah denoted a tribal town " . . . historically . . . on a par with the Creek towns in that it was originally an independent unit of government. Hence, the Solicitor is wrong in saying that Keetoowah was not historically a governing unit."<sup>101</sup> McNickle concluded his opinion by recommending that the 1937 Kirgis opinion be revised.<sup>102</sup>

The Interior Department became a proponent of federal recognition for the Keetoowahs, and on March 24, 1945, Acting Secretary of Interior, Abe Fortas, wrote a letter to Henry M. Jackson, Chairman of the Committee on Indian Affairs, in support of the bill to recognize the Keetoowahs under the Oklahoma Indian Welfare Act.<sup>103</sup> Fortas stated that the Keetoowah organization:

Represents nearly one-half of the Cherokees possessing one-half or more degree of Indian blood now residing in the territory known as the Cherokee Nation of Oklahoma.<sup>104</sup>

That letter would later be included in the Report that accompanied the bill.<sup>105</sup>

On August 10, 1946, Congress passed the bill to recognize the "Keetoowah Indians of the Cherokee Nation of Oklahoma . . . as a band of Indians residing in Oklahoma within the meaning of section 3 of the Act of June 26, 1936."<sup>106</sup> The Tribe created its base membership roll in 1949,

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<sup>95</sup> Letter from J. Bartley Milam, Principal Chief of the Cherokee Nation, to John Collier, Commissioner on Indian Affairs, April 10, 1942 (Exh. 29).

<sup>96</sup> D'Arcy McNickle analysis of Keetoowah Band, April 24, 1944 (Exh. 27).

<sup>97</sup> Id. at 4.

<sup>98</sup> Id. at 3.

<sup>99</sup> Id.

<sup>100</sup> Id. at 2

<sup>101</sup> Id. at 2

<sup>102</sup> Id. at 4.

<sup>103</sup> See Letter from Abe Fortas, Acting Secretary of the Interior to Congressman Henry M. Jackson, Chairman, Committee on Indian Affairs, March 24, 1945, included in H.R. Rep. No. 447 (1945) (Exh. 30).

<sup>104</sup> Id. at 2.

<sup>105</sup> H.R. Rep. No.447 (1945) (Exh. 30).

<sup>106</sup> See Act of August 10, 1946, Pub. L. No. 79-715 (Exh. 3).

for certification by the Secretary of the Interior.<sup>107</sup> The Tribe's constitution and by-laws were finalized and approved by the Secretary of the Interior on May 8, 1950 then ratified by its members on October 3, 1950.<sup>108</sup> Today, in order to be a member of the United Keetoowah Band of Cherokee Indians in Oklahoma, individual Cherokee Indians must be at least one-quarter Cherokee Indian blood and be a descendant of an individual on the (certified) 1949 roll or the final rolls of the Cherokee Nation, which were closed in 1907.<sup>109</sup> Ninety-eight percent of the currently enrolled members presently live within the nine districts that constitute the historic Cherokee Nation Reservation.<sup>110</sup> Nearly one half of the members still speak the traditional Cherokee language, some using English only as a second language.<sup>111</sup>

In 1949, the President of the United States appointed W.W. Keeler (a Philips Oil Company executive) as Principal Chief to the Cherokee Nation.<sup>112</sup> Keeler was only the second appointed Chief to hold office for any significant period of time.<sup>113</sup> The Presidential authority to remove or appoint the Principal Chief of the Cherokee Nation was shortly thereafter delegated to the Secretary of the Interior,<sup>114</sup> who continued to appoint Keeler as Principal Chief until 1971.

On July 5, 1976, the CNO adopted a constitution.<sup>115</sup> Soon thereafter, the CNO was added to the list of federally recognized Indian tribes.<sup>116</sup> The UKB and the CNO are both comprised of descendants of the historic Cherokee Nation, each requires its members to prove descent from an individual on the final Cherokee Roll of 1907.<sup>117</sup>

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<sup>107</sup> See Letter from W.O. Robert, General Superintendent to Mr. William Zimmerman, Jr., Assistant Commissioner of Indian Affairs, June 28, 1949, with membership roster of the United Keetoowah Band of Cherokee Indians in Oklahoma attached (Exh. 31). The 1949 roll consisted of an earlier 1939 roster of voting members, with the addition of some few honorary "non-voting members." (Exh. 31b) The 1949 roll contains 25 persons with no verified degree of Indian blood from a total of 1234 listed. (Exh. 31a). Voting eligibility in 1939 was limited to "All Dawes Commission enrolled or descendants of such enrolled Cherokee Indians, provided they are 21 years of age or older and are of one-half or more degree Cherokee Indian blood." ("Notice to United Keetoowah Cherokee Band Of Indians In Oklahoma," 1<sup>st</sup> page of Exh. 51)

<sup>108</sup> Constitution and By-laws of the United Keetoowah Band of Cherokee Indians Oklahoma, Ratified October 3, 1950 (Exh. 32).

<sup>109</sup> See United Keetoowah Band of Cherokee Indians of Oklahoma Constitution (Exh 32); Membership Ordinance (Exh. 33); and Procedures for Membership Application (Exh. 34). Because the 1949 roll included some few honorary members, that two percent included in 1949 would not, in fact, be required to prove such descent. That loophole has been closed as to any new enrollees not descending from the 1949 roll. Thus, for purposes of this case, substantially all present UKB members descend from the 1907 roll.

<sup>110</sup> Affidavit of Lucy Wolf (Exh. 59).

<sup>111</sup> Id.

<sup>112</sup> See Georgia Rae Leeds, The United Keetoowah Band of Cherokee Indians in Oklahoma 24 (1996) (Exh. 47).

<sup>113</sup> Id. at 11, 23-24.

<sup>114</sup> See Exec. Order No. 10,250, ¶ (o), 16 Fed. Reg. 5385 (June 5, 1951).

<sup>115</sup> 1975 Constitution of the Cherokee Nation of Oklahoma, preamble (Exh.36).

<sup>116</sup> Indian Entities Recognized and Eligible to receive Services from the United States Bureau of Indian Affairs, 67 Fed. Reg. 46,331 (July 12, 2002)(current list).

<sup>117</sup> 1975 Constitutino of the Cherokee nation of Oklahoma, art. III (Exh.36); United Keetoowah Band of Cherokee Indians Membership Ordinance of 1990, § 82 (Exh. 33).

**Proposed Amendments to H.R. 2880**  
Five Nations Indian Land Reform Act

*Clarify the definition of Five Nations.* In Section 4 (1) the definition of Five Nations should be amended to read (proposed new language underlined):

(1)FIVE NATIONS.- The term “Five Nations” means the Cherokee Nation through its successors the United Keetoowah Band of Cherokee Indians in Oklahoma and the Cherokee Nation of Oklahoma, the Chickasaw Nation, the Choctaw Nation of Oklahoma, the Seminole Nation of Oklahoma, and the Muscogee (Creek) Nation, collectively, which were historically referred to as the “Five Civilized Tribes.”

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If the above change is NOT made to the definition of “Five Nations,” then we ask that, at a minimum, the following changes be made in HR 2880:

*Escheat.* Of particular concern is the escheat provision in Section 403(b)(5). As presently proposed in the bill, the restricted property of a UKB member who dies without heirs escheats not to the UKB, but to the Cherokee Nation of Oklahoma – whose “blood” all UKB members carry. We believe this to be an unanticipated result, and one that must be remedied. We propose that:

the proposed amendment to Public Law 91-240 currently included in the bill be deleted and that the language “or a person of the blood of said Tribes” be stricken from Public Law 91-240. The deletion of this language will exclude the UKB members from its application and make this provision of law consistent with the overall intent of Public Law 91-240, the law applicable to other Indian Tribes in the nation and this bill.

*Heirship and Probate.* A similar problem is posed by the heirship and probate provisions in Section 302, which would transfer administrative responsibility to the Secretary or her designee. Designation would presumably include the ability of an Indian Tribe to enter into a contract to carry out such services in place of the Secretary pursuant to the Indian Self-Determination Act (ISDA). The Cherokee Nation of Oklahoma has repeatedly asserted that it has exclusive power to enter into such contracts – even to govern the affairs of UKB members -- within the former Cherokee Reservation. UKB asks for clarification that the Secretary may not, pursuant to the ISDA, delegate administration of matters that are so central to a Tribe's membership interests and inherently central to the UKB's services to its own members. To preserve that governmental right, we ask that the issue be addressed through the definition section, by adding the following language to the definition of Secretary at Section 4(7):

. . . except that the Secretary shall not authorize any Indian Tribe to administer the property interests of another Indian Tribe or the members of another Indian Tribe without the written consent of the affected Indian Tribe.

Conveyance of individual restricted properties. A subsidiary problem is posed by the conveyance of individual restricted properties to individuals of another Indian Tribe or to the tribal government of a different Indian Tribe. While free alienation of property is not problematic, the incidental transfer of tribal jurisdiction could be. We suggest that language be incorporated to provide that such transfers of restricted property between individuals have no affect on existing tribal jurisdiction, and that transfers from an individual to an outside tribal entity not divest jurisdiction without the written consent of the Indian Tribe exercising current jurisdiction. To accomplish this, we suggest that a subsection (3) be added to Section 202(a):

(3) JURISDICTION. Transfer of restricted property by an Individual Indian to an Individual Indian belonging to another Indian Tribe shall not affect jurisdiction over that property; transfer of restricted property by an Individual Indian to the government of an Indian Tribe shall not operate to transfer jurisdiction over that restricted property without the written consent of the Indian Tribe currently exercising jurisdiction over that restricted property.

Change of land status should be consistent with current law applicable to the rest of Indian country. Another jurisdictional problem exists in Section 107, which requires the Secretary to place into restricted status currently unrestricted portions of property owned by Individual Indian owners. The UKB is concerned that this provision will dramatically increase the amount of property that the Cherokee Nation of Oklahoma – whose members own a large quantity of unrestricted portions of land – exercises jurisdiction over without allowing the Secretary to consider the impacts on the UKB. Congressional members informed us that this bill was not intended to change the level of jurisdiction of any tribe, yet this provision will do just that. Any provision to change the status of land should be consistent with current law applicable to the rest of Indian Country, which requires individuals to submit an application to the Secretary, who then has discretion to convert the status, after permitting other governmental entities to comment on the application.

The UKB would also like to point out language in Section 2(3)(B) of the Findings in the bill, may be interpreted to confer improper significance to the boundaries of the historic Cherokee Nation reservation. The bill neither establishes nor disestablishes any reservation of the Historic Cherokee Nation. However, because the bill is not geographically limited to restricted property located “within the exterior boundaries of the Five Nations,” we suggest deleting that restriction from the Findings. We recommend that the language be changed to

“has impeded the self-determination and economic self-sufficiency of Individual Indians”